IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 315 of 1999

For Approval and Signature:

HONOURABLE MR.JUSTICE A.L.DAVE
HONOURABLE MR.JUSTICE SHARAD D.DAVE

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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RAJAUBHAI BHAGVATBHAI VASAVA & 1 - Appellant(s)
Versus
STATE OF GUJARAT - Opponent(s)

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Appearance :
MR DN VAKIL for HL PATEL ADVOCATES for the Appellants.
MR DABHI, APP, for the respondent-State.

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CORAM : HONOURABLE MR.JUSTICE A.L.DAVE

and

HONOURABLE MR.JUSTICE SHARAD D.DAVE

Date : 23/07/2007

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE A.L.DAVE)

1. The appellants came to be tried by Sessions Court, Bharuch, in Sessions case No.59 of 1998, for the offence of murder of Kishore Kantibhai Vasava and causing hurt to Prahladbhai Mangubhai on 25th December, 1997, at about 20.00 hours, near Taad Faliya, at Ankleshwar.

2. The prosecution case, in brief, is that Meenaben, sister of the appellants was married to Pratapbhai, brother of the deceased. It was a love marriage, which was not liked by the appellants. On the day of the incident, when the deceased along with his cousins, Prahlad Mangubhai and Ranchhodbhai, was returning home, they were accosted by the appellants. Both the appellants were armed with knife. They hooted the deceased and party and, then, ultimately, appellant-Raju Bhagwat Vasava (A1) inflicted a knife blow on Kishore. Prahladbhai Mangubhai tried to intervene and appellant, Babu Bhagwat (A2) assaulted him with knife and caused hurt on the wrist. In the meantime, deceased-Kishore, after having received one knife blow from A1, started running, eye-witnesses, Prahlad and Ranchhod, followed him and they were all chased by the appellants. The deceased had hardly gone a distance of few feet when he fell down and A1 inflicted further blows on the deceased with his knife and then both the appellants went away. The deceased was taken to Civil Hospital, Bharuch, in an auto-rickshaw by his sister-in-law, Meena, who is

the sister of the appellants and his own sister Meena alias Nazma. On examination, the doctor declared the deceased to be dead. Police was informed. On the basis of the Wardhi which was given by Meenaben, sister of the appellants, offence came to be registered and investigation started. The police, having found sufficient evidence to connect the appellants with the crime, filed charge sheet in the Court of learned Judicial Magistrate, First Class, at Ankleshwar, who, in turn, committed the case to the Court of Sessions, at Bharuch, and Sessions Case No.59 of 1998 came to be registered. The Sessions Court accepted the prosecution case and recorded conviction and passed sentence by judgment and order dated 15th March, 1999. Appellant No.1 came to be convicted for the offence punishable under Section 302 read with Section 34 of the Indian Penal Code and sentenced to undergo imprisonment for life and to pay a fine of Rs.500/-, in default, to undergo simple imprisonment for 30 days. He was also convicted for the offence punishable under Section 135 of the Bombay Police Act and sentenced to undergo simple imprisonment for 3 months and to pay a fine of Rs.200/-, in default, to undergo further simple imprisonment for 10 days.

2.1 A2 came to be convicted for the offence punishable under Section 302 read with Section 34 of I. P. C. and came to be sentenced to undergo imprisonment for life and to pay a fine of Rs.500/-, in default, to undergo further simple imprisonment for 30 days. He was also convicted for the offence punishable under Section 324 and sentenced to undergo simple imprisonment for six months and to pay a fine of Rs.200/-, in default, to undergo further

simple imprisonment for 10 days. He was also convicted for the offence under Section 135 of the Bombay Police Act and sentenced to suffer simple imprisonment for 3 months and to pay a fine of Rs.200/-, in default, to undergo further simple imprisonment for 10 days. It is this judgment and order that is challenged in this appeal.

3. We have heard learned Advocate, Mr. D. N. Vakil, appearing for H. L. Patel Advocates and learned Additional Public Public Prosecutor, Mr. Dabhi.

4. Learned Advocate, Mr. Vakil, submitted the incident occurred on 25th December, 1997, at about 8.00 P.M. when there would be darkness and chances of a mistake having occurred in identifying the assailants cannot be ruled out. He also submitted that the motive indicated by the prosecution, namely, marriage of sister of the appellants with brother of the deceased, is a stale ground because the marriage had taken place about two months prior to the incident and that the parties belong to the same community. There was no objection as such. Mr. Vakil also submitted that the incident occurred in a public place. It has come in evidence that people had gathered. Still the prosecution has not examined any independent witness to the incident. The witnesses who are examined are all related witnesses and naturally they would support the prosecution. Mr. Vakil submitted that the evidence as to incident indicates that there was altercation and hubbub. Possibility of the incident having arisen out of sudden provocation cannot be ruled out and, therefore, the case would fall in the category of culpable homicide not amounting to murder

rather than in the category of murder. Mr. Vakil submitted that the discovery of weapon cannot be considered as a discovery of weapon in the eye of law because it is a joint discovery with the help of a common Panchnama. Lastly, it was submitted that even as per the prosecution case, A1 has given the fatal blow to the deceased and A2 is alleged to have caused simple hurt to witness-Prahlad. A2 is, therefore, erroneously convicted by employing Section 34 of the I.P.C. It was, therefore, submitted that the appeal may be allowed and the conviction may be set aside.

5. Learned Additional Public Prosecutor, Mr. Dabhi, has opposed this appeal. According to him, there are three eye-witnesses to the incident, namely, P.W.2-Prahladbhai Mangubhai, P.W.3-Ranchhodbhai Balubhai and P.W.6-Gumanbhai Chimanbhai. Their depositions as to incident is consistent and natural. Mr. Dabhi submitted that these witnesses clearly indicate involvement of the appellants in the incident. Both the appellants were armed with knife and the whole incident is prompted by the appellants when they hooted the deceased and party, namely, the deceased, witness-Prahlad and witness-Ranchhod. It has also come in evidence that, despite this hooting, the deceased and his companions did not react and still appellant No.1 inflicted knife blow on the deceased. As if this is not enough, when Prahlad intervened, A2 assaulted him with a view to preventing him from rescuing the deceased. After this is over, when the deceased started running, both the appellants chased them and A1 inflicted repetitive blows on the deceased, who had fallen to the ground. At that time, though A2 is not attributed any action, his act of chasing

the deceased and party by itself indicates that he was with A1 in the commission of the offence. Mr. Dabhi submitted that, had somebody tried to intervene, as in the first occasion, A2 would have certainly prevented him from doing so, just as he did at the initial part of the incident. Mr. Dabhi submitted that the T-Shirt and the pant of the deceased and the knife discovered by A1 carried blood stains of the same blood group and, therefore, the prosecution case has rightly been believed by the Trial Court. Mr. Dabhi submitted that there is no weakness in the prosecution case, though pointed out by the appellants, to render the evidence unacceptable. Mr. Dabhi, therefore, submitted that the appeal may be dismissed.

6. Witnesses-Prahladbhai Mangubhai, Ranchhodbhai Balubhai and Gumanbhai Chimanbhai are examined at Exhibits 10, 11 and 14, respectively. All of them consistently deposed that, while the deceased and Prahlad were returning, they thought of having a cup of tea and, therefore, they went to the tea-stall of Ranchhod Balubhai, who happens to be their cousin. Ranchhod Balubhai was about to close the stall for that day and, therefore, they had tea together and, thereafter, all three of them started together for their home. When they reached near a sweetmeat shop (Zelebi shop), they found the appellants standing there and they hooted them and, then, suddenly, A1 attacked the deceased with a knife. Ranchhod and Prahlad tried to intervene, but Prahlad was attacked by A2 with a knife in order to prevent him from intervening. Ranchhod's shirt got torn in the incident. In the meantime, Kishore started running after having received one injury. Prahlad and Ranchhod also followed him and the appellants chased

all of them with the knives. Kishore had hardly gone a few steps when he fell down near Taad Faliya and, at that point of time, A1 inflicted 3-4 knife blows on him. This, obviously, resulted into a hubbub followed by witnesses coming from all around. The incident was seen by Gumanbhai Chimanbhai from his shop, which was near the place of incident. It emerges from cross-examination of Prahlad that, despite hooting by the appellants, the deceased and his companions did not retort or respond and then Raju Vasava, i.e. A1, inflicted knife blow within couple of minutes. It appears that near the place of incident, there were about four butcher shops and those shops were closed, as per evidence of Ranchhodbhai Balubhai emerging in cross-examination.

6.1 Except that these three witnesses are relatives of the deceased, learned Advocate for the appellants was not able to show any reason for not believing these witnesses. Deposition of a related witness cannot be rejected only on that ground if, otherwise, it is found to be truthful, trustworthy and reliable. Non-examination of independent witness is not always fatal to the prosecution. In the instant case, we notice that the incident occurred during winter month of December, at about 8.00 P.M., in a small town like Ankleshwar. It has come in evidence of Ranchhodbhai that he was about to close his tea-stall for that day. It has also come in evidence that the butcher shops were closed. Obviously, therefore, there would not be many people around, who could have seen the incident and non-examination of independent witness, therefore, cannot be treated as a weak facet of the prosecution case. A related witness would be interested at the most

in securing a punishment for the miscreant. It is not even suggested by the defence nor it is argued on behalf of the appellants that the three eye-witnesses had anything against the appellants - no dispute, no quarrel and no animosity. Under the circumstances, the evidence of the three eye-witnesses, Prahladbhai, Ranchhodbhai and Gumanbhai has to be accepted. This would clearly implicate the appellants.

6.2 It was contended that because it was a winter evening, it would be dark and possibility of mistaken identity cannot be ruled out. We are unable to accept this contention for the reason that the appellants and the witnesses are known to each other. It has not come in evidence that it was pitch-dark at the place of incident and at the time of incident and, therefore, the contention cannot be accepted. So far as attribution of motive is concerned, in a case where the incident is seen by eye-witnesses, who are found to be reliable, motive pales into irrelevance. Even absence of motive may not be of any relevance.

6.3 Now that we have found that the evidence led by the prosecution is good enough to prove involvement of both the appellants in the incident, the question that arises for our consideration is whether they both have been rightly convicted employing Section 34 of the I. P. C. In this regard, undisputedly, A1 has inflicted the fatal blow. The version of the eye-witnesses is consistent on this. It was contended that A2 has not caused any injury to the deceased. He, therefore, could not have been convicted for murder by employing Section 34 of the I. P. C. We

are unable to accept this contention in view of the fact that both the appellants were seen armed with knives. It is the appellants, who had prompted the incident by hooting the deceased and his companions. They did not retort or respond, still A1 assaulted the deceased and when witness Prahlad tried to intervene, A2 caused hurt to him with a knife. Thereafter, when the deceased started running, both the appellants together chased him and the witnesses and, on the deceased falling down, A1 inflicted knife blows on the deceased. It is true that, at that time, A2 has not given any blow, but he did not give any blow even in the first part of the incident. Still, it cannot be said that he did not participate in the first part of the incident nor can it be said that he had no intention to take part in the second part of the incident because he did chase the deceased and his companions, on the deceased started running after the first part of the incident. In our opinion, therefore, there is no scope for any doubt to read common intention on the part of the appellants to cause death of the deceased.

6.4 So far as discovery of weapon is concerned, it is true that it is a joint discovery by a common Panchnama and we may not assign any significance to that discovery. But absence of discovery would not abrogate the effect of evidence of eye-witnesses.

7. In view of the above discussion, we are of the view that the Trial Court was justified in recording conviction of the appellants. It is true that Meenaben Pratapbhai, who took the deceased to the Hospital and on whose information, Yadi was sent

to the Police Station and offence was registered has not supported the prosecution case. She happens to be sister-in-law of deceased, Pratap being brother of the deceased. It is equally true that she is full-blood sister of the appellants and, obviously, she would not support the prosecution. Non-support by her would not damage the prosecution case in any manner.

8. In light of the foregoing discussion, we are of the firm opinion that the appeal does not merit acceptance and the appeal, therefore, stands dismissed. Judgment and order of conviction and sentence of the Trial Court is hereby confirmed.

[A. L. DAVE, J.]

[S. D. DAVE, J.]

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